In the Supreme Court
OF THE
United States

Supreme Court, U.
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OCTOBER TERM, 1941

No. 762

JAMES M. LEAVER, JR.,
Petitioner,

vs.

CITIZENS NATIONAL TRUST AND SAVINGS BANK OF RIVERSIDE (a national banking corporation), and DONALD PARKER, as Administrators with the Will Annexed of the Estate of George D. Parker, Deceased, FOOD MACHINERY CORPORATION (a corporation), SIGNODE STEEL STRAPPING COMPANY (a corporation), PARKER MACHINE WORKS, INC. (a corporation), JOHN D. CRUMMEY and WIRE TIE MACHINERY COMPANY (a corporation),
Respondents.

REPLY BRIEF OF PETITIONER TO BRIEF FOR RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

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REPLY BRIEF OF PETITIONER TO BRIEF FOR RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

The brief for respondents in opposition to the petition for writ of certiorari contains certain misstate-

ment which is believed to be of such importance as to be called to the attention of the Court prior to consideration of the writ of certiorari.

The implications of such misstatement are far reaching and if undisputed might result in grave injustice to the petitioner and the destruction of his business and property and adversely effect the anti-trust laws and patent law and the public.

Respondents' opposition brief contains the following undisputably false statement and implication at page 20 (emphasis supplied):

(a)

> "This is a private controversy, *and in all essential respects it had already been determined adversely to petitioner in the State Courts of California* before the respondents' motions for summary judgment were granted by the District Court."

The California State Courts referred to are the Superior Court for Riverside County, State of California, and the District Court of Appeal for the Fourth District of the State of California, and the decisions relied upon by respondents are those indicated on pages 7 and 8 of their opposing brief. Respondents quote from the decision of the Superior Court for Riverside County, State of California and fail to quote from the clarifying and controlling decision of the District Court of Appeal for the Fourth District on appeal taken by the petitioner. In the latter case, *Evans v. Citizens National Trust and Savings Bank, et al.*, 29 Cal. App. (2d) 133, 84 Pac. 218; the Court stated (emphasis supplied):

(b)

"It is argued that both *Leaver and the heirs of Evans have the right to sell* the machine *to anybody* and collect a commission. This is recognized by the decree * * *." (at page 143.)

(c)

"When Parker died the other two parties were living and under the plain meaning of the language used *the right to manufacture passed to them.*" (at page 139.)

The declaratory decree of the Superior Court of the State of California held (confirmed by the foregoing decision) that:

(d)

"The right to manufacture under said contract of October 19, 1922, includes the right to manufacture in the United States of America, its territorial possessions, and in foreign countries." (R. 1385.)

(e)

"Upon the death of Leaver, the manufacturing rights *and all other rights vested in him* will pass to, and vest in his heirs, executors and administrators." (R. 1385.)

On no construction could the decisions of the California State Courts (see (b), (c), (d) and (e) above) be held to have been "in all essential respects * * * determined adversely to the petitioner" as stated in respondents' opposing brief, (a) above. Clearly the decisions of the California State Courts (indicated

(b), (c), (d) and (e) above) affirm petitioner's right to sell and manufacture in intrastate, interstate and foreign commerce, automatic Wire-Tying machines and parts, whether patented or unpatented, and without restraint. It is important to note that respondents' brief at page 8 contains the statement:

> "Upon petitioner's appeal this decree was affirmed and *became final.*" Emphasis supplied.)

The very decision relied upon by respondents to bar petitioner from engaging in interstate commerce in the machines and parts in question definitely confirms petitioner's rights so to do. The very fact that respondents do not deny the exclusion, but claim they do so under rights, presents a basic issue under the Anti-Trust Laws which no Court, excepting the Federal Courts have jurisdiction to determine.

At this point it is important to note that the Brief filed on behalf of the Respondents in opposition to the grant of the Writ of Certiorari fails to point out any insufficiency in the pleadings of the complaint as amended or any misstatement in petitioner's affidavits or in the "Summary Statement of Matters Involved" of the Petition for Writ of Certiorari.

CONFLICTING DECISIONS EFFECTING INTERSTATE COMMERCE.

Following the admittedly "final" decisions of the California State Courts, the District Court in and for the Northern District of California, granted respondents' motions for summary judgment (see (a) above)

deciding adversely to the petitioner in several essential respects therefore decided favorably to petitioner by the California State Courts, including petitioner's right to sell to anyone, affirmed by State Courts (see (b) above). The error as to petitioner's right to sell is one of the points relied on by petitioner in the appeal as to such adverse decision. (Point 34, R. 1540.)

RESPONDENTS AVOID ARGUING JURISDICTION BY RAISING COLLATERAL ISSUES.

Respondents present arguments on controvertial issues not bearing on jurisdiction and which can be considered only when and if the Court assumes jurisdiction. Answering such arguments would be outside the issue presented by this petition. It is fundamental that jurisdiction is the power to determine such issues and to determine them the Court must assume jurisdiction.

The following cases cited in the opinion of the Circuit Court of Appeals are contrary to the conclusion reached by that Court and strongly support petitioner's contention:

In the case of *Luckett v. Delpark, Inc., et al.*, 270 U. S. Rep. 496, this Court held:

> "As appears from the statement of it, the plaintiffs' case arose under the patent law. It was not affected by the fact that the plaintiffs relied upon a contract as fixing the mode of estimating damages or that they sought a return of patented machines to which if there was no license they were entitled. These were incidents. The essen-

tial features were the allegation of an infringement and prayers for an injunction, on account of profits and triple damages—the characteristic form of relief granted by patent law. The damages were grounded on the infringement, and the contract was relied upon only as furnishing the mode in which they should be ascertained."

In the case of *Geneva Furniture Company v. Karpen,* 238 U. S. 254, the Court said at page 258:

"Thus it is within the ruling in *The Fair v. Kohler Die Co.,* 228 U.S. 22, 25, that 'if the plaintiff really makes a substantial claim under an act of Congress there is jurisdiction whether the claim ultimately be held good or bad'. Jurisdiction, as pointed out in that case, is the power to consider and decide one way or the other, as the law may require, and is not to be declined merely because it is not foreseen with certainty that the outcome will help the plaintiff. Of like import is Healy v. Sea Gull Specialty Co., 237 U.S. 479. *"We therefore hold that so much of the bill as charges the defendants with contributory infringement of the plaintiff's letters patent and seeks relief on that ground presents a case arising under the patent laws of which the District Court should have taken jurisdiction."* (Emphasis supplied.)

CONCLUSION.

Petitioner submits that the showing herein made substantiates the jurisdiction and entitles petitioner to

a grant of the writ of certiorari, or at least a hearing on probable jurisdiction often granted by the Court.

Dated, Washington, D. C.,
December 29, 1941.

Respectfully submitted,
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Attorney for Petitioner.

BOOTH B. GOODMAN,
Of Counsel.